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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

No Fear, Inc.
v.
Reginald P. Chriss.

Opposition No. 110,472
to application Serial No. 75/188,312
filed October 28, 1996

Kit M. Stetina of Stetina Brunda Garred & Brucker for No
Fear, Inc.

Joseph L. Strabala, Esq. for Reginald P. Chriss.

Before Simms, Walters, and Drost, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

Reginald P. Chriss (applicant) filed an application
to register on the Principal Register the mark DEFEAT
YOUR FEARS (typed drawing) for goods identified as
"adhesive bumper stickers and window decals" in
International Class 16 and "shirts, sweatshirts and hats"
in International Class 25.¹

¹ Serial No. 75/188,312 filed on October 28, 1996, and
containing an allegation of a date of first use of September 17,
1996, and a date of first use in commerce of October 19, 1996.

On May 8, 1998, No Fear, Inc. (opposer) filed a notice of opposition to the registration of applicant's mark for the identified goods alleging that applicant's mark was confusingly similar to thirty trademark registrations for the marks NO FEAR, FACE YOUR FEARS, and other "fear" marks opposer owns for a variety of goods and services under Section 2(d) of the Trademark Act. 15 U.S.C. § 1052(d).²

² Opposer testified that it owned the following valid and subsisting registrations (Moates dep. at 11-28):

Registration No. 1,981,665 for the mark FEAR ME for "wearing apparel, namely T-shirts, shirts, shorts, pants, sweat shirts, sweat pants, hats, visors, shoes, sandals and belts" issued June 18, 1996, Section 8 affidavit accepted, Section 15 affidavit filed, and reciting December 1995 as the date of first use and first use in commerce;

Registration No. 1,912,489 for the mark FEAR THIS for "decals and stickers" issued August 15, 1995, Section 8 affidavit accepted, Section 15 affidavit filed, and reciting October 10, 1994 as the date of first use and first use in commerce;

Registration No. 1,490,123 for the mark NO F'EARs for "jewelry," issued May 31, 1988, Section 8 affidavit accepted, Section 15 affidavit filed, and reciting September 22, 1987 as the date of first use and first use in commerce;

Registration No. 1,737,420 for the mark NO FEAR (in stylized form) for "decals, wearing apparel; namely, T-shirts, shirts, shorts, pants, sweat shirts, sweat pants, hats, visors, shoes, sandals and belts; surfboards, skateboards, surf leashes, and protective articles; namely, knee pads, elbow pads, and helmets for use in skateboarding," issued December 1, 1992, Section 8 affidavit accepted, and reciting August 1, 1990 as the date of first use and first use in commerce;

Registration No. 1,822,026 for the mark NO FEAR (in stylized form) for "all purpose sports bags," issued February 15, 1994, Section 8 affidavit accepted, Section 15 affidavit filed, and reciting September 1, 1990 as the date of first use and first use in commerce;

Registration No. 1,842,402 for the mark NO FEAR (in stylized form) for "footwear: namely, shoes, sandals, [and] thongs," issued June 28, 1994, Section 8 affidavit accepted, Section 15

affidavit filed, and reciting October 15, 1992 as the date of first use and first use in commerce;

Registration No. 1,855,031 for the mark NO FEAR for "jewelry; namely watches, bracelets, earrings and anklets; and clothing and footwear; namely, pants, shirts, shorts, T-shirts, bathing suits, jackets, sweat shirts, visors, sandals and shoes," issued September 20, 1994, Section 8 affidavit accepted, Section 15 affidavit filed, and reciting April 1, 1986 as the date of first use and June 1, 1990 as the date of first use in commerce.

Registration No. 1,856,752 for the mark NO FEAR (in stylized form) for "printed matter; namely, decals; wearing apparel; namely, T-shirts, shirts, sweatshirts, tank tops, shorts, pants, visers [sic], swim trunks, shoes and caps," issued October 4, 1994, Section 8 affidavit accepted, Section 15 affidavit filed, reciting January 15, 1993 as the date of first use and first use in commerce;

Registration No. 1,870,426 for the mark NO FEAR for "sunglasses and eyeglasses," issued December 27, 1994, Section 8 affidavit accepted, Section 15 affidavit filed, and reciting June 16, 1994 as the date of first use and first use in commerce;

Registration No. 1,870,475 for the mark NO FEAR for "bicycles and structural parts therefor," issued December 27, 1994, Section 8 affidavit accepted, Section 15 affidavit filed, and reciting June 16, 1994 as the date of first use and first use in commerce;

Registration No. 1,870,682 for the mark NO FEAR for "video game cartridges," issued December 27, 1994, Section 8 affidavit accepted, Section 15 affidavit filed, and reciting June 16, 1994 as the date of first use and first use in commerce;

Registration No. 1,891,475 for the mark NO FEAR for "retail clothing store services," issued April 25, 1995, Section 8 affidavit accepted, Section 15 affidavit filed, and reciting July 1990 as the date of first use and first use in commerce;

Registration No. 1,906,208 for the mark NO FEAR for "adhesive bandage strips for skinwounds," issued December 18, 1995, Section 8 affidavit accepted, Section 15 affidavit filed, and reciting June 16, 1994 as the date of first use and first use in commerce;

Registration No. 1,907,882 for the mark NO FEAR for "toys; namely, model cars," issued July 25, 1995, Section 8 affidavit accepted, Section 15 affidavit filed, and reciting September 1, 1993 as the date of first use and first use in commerce;

Registration No. 1,978,563 for the mark NO FEAR and design for "wearing apparel, namely shorts, pants, T-shirts, sweatshirts, sweatpants, visors, belts and shoes," issued June 4, 1996, and reciting June 16, 1995 as the date of first use and first use in commerce;

Registration No. 1,978,596 for the mark NO FEAR (in stylized form) for "wearing apparel, namely T-shirts, shirts, shorts, pants, sweatshirts, sweatpants, hats, visors, shoes, thong footwear and belts," issued June 4, 1996, and reciting July 1, 1994 as the date of first use and first use in commerce;

Registration No. 1,978,597 for the mark NO FEAR and design for "wearing apparel, namely T-shirts, shirts, shorts, pants, sweatshirts, sweatpants, hats, visors, shoes, thong footwear and belts," issued June 4, 1996, reciting June 1, 1995 as the date of first use and first use in commerce;

Registration No. 1,979,971 for the mark NO FEAR for "fragrance products for men and women; namely, perfume, eau de perfume, cologne, eau de cologne, after shave lotion and cream, body lotion and cream," issued June 11, 1996, reciting August 1995 as the date of first use and first use in commerce;

Registration No. 2,040,860 for the mark NO FEAR for "dental face mask and dental gloves," issued February 25, 1997, reciting January 4, 1996 as the date of first use and first use in commerce;

Registration No. 2,055,148 for the mark NO FEAR in stylized form for "wearing apparel, namely, shirts, T-shirts, shorts, pants, sweatshirts, sweatpants, hats, visors, shoes, and belts," issued April 22, 1997, reciting May 16, 1996 as the date of first use and first use in commerce;

Registration No. 2,055,158 for the mark NO FEAR in stylized form for "wearing apparel, namely, shirts, T-shirts, shorts, pants, sweatshirts, sweatpants, hats, visors, shoes and belts," issued April 22, 1997, reciting May 16, 1996, as the date of first use and first use in commerce;

Registration No. 2,093,391 for the mark NO FEAR for "printed matter, namely, calendars, posters, newspapers and magazines featuring sports and recreation subject matter," issued September 2, 1997, reciting December 1995 as the date of first use and first use in commerce;

Registration No. 2,095,492 for the mark NO FEAR for "luggage and all-purpose sports bags, snowboard boots, ski boots, sport shoes and sport sandals," issued September 9, 1997, reciting July 1995 as the date of first use and first use in commerce;

Registration No. 2,044,263 for the mark FEAR THIS for "wearing apparel, namely T-shirts, shirts, shorts, pants, visors, caps, polo shirts, and sweatshirts," issued May 11, 1997, reciting August 8, 1996 as the date of first use and first use in commerce;

Registration No. 2,105,774 for the mark KNOW FEAR for "wearing apparel, namely shorts, pants, shirts, T-shirts, sweatshirts, sweatpants, visors, belts and shoes," issued October 14, 1997, reciting June 25, 1996, as the date of first use and first use in commerce;

Applicant denied the salient allegations of opposer's notice of opposition.

The Record

The record consists of the file of the involved application; the trial testimony deposition, with accompanying exhibits, of Marty Moates, opposer's vice president; portions of the discovery deposition, with accompanying exhibits, of applicant; two printed publications; and applicant's response to opposer's first set of interrogatories. Applicant took no testimony nor did he submit any other evidence.

Registration No. 2,120,294 for the mark FEAR SPORTS for "wearing apparel, namely, T-shirts, shirts, shorts, pants, sweatshirts, sweatpants, hats, visors, shoes, sandals, and belts" and "production and distribution of television and cable television programs" issued December 9, 1997, reciting May 1, 1997 as the date of first use and first use in commerce;

Registration No. 2,065,291 for the mark FACE YOUR FEARS for "wearing apparel, namely, shirts, T-shirts, shorts, pants, sweatshirts, sweatpants, hats, visors, shoes, and belts," issued May 27, 1997, reciting September 16, 1996 as the date of first use and first use in commerce;

Registration No. 2,126,178 for the mark LOTS OF FEAR for "wearing apparel, namely, shirts, T-shirts, shorts, pants, sweatshirts, sweatpants, hats, visors, shoes, and belts," issued December 30, 1997, reciting February 15, 1997 as the date of first use and first use in commerce; and

Registration No. 2,019,466 for the mark FEAR GOD in stylized form for "bumper stickers, clothing namely, shirts, hats, and pants," issued November 26, 1996, reciting June 1993 as the date of first use and June 1994 as the date of the first use in commerce.

Both parties have filed briefs, but no oral hearing was requested.³

Priority

Priority is not an issue here in view of opposer's ownership of registrations for marks containing the word NO FEAR, FACE YOUR FEARS, or similar terms. See King Candy Co. v. Eunice King's Kitchen, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Lack of Use in Commerce Argument

Opposer alleges that "applicant's token sales of his goods while on vacation does not constitute use in commerce under the Trademark Act." Applicant's Br. at 10. Applicant relies on the cases of International Telephone & Telegraph Corp. v. International Mobile Machines Corp., 800 F.2d 1118, 231 USPQ 142 (Fed. Cir. 1986) and Blue Bell, Inc. v. Jaymar-Ruby, Inc., 497 F.2d 433, 182 USPQ 65 (2d Cir. 1974). Opposer cites applicant's response to its interrogatory in which applicant states that he "visits various outdoor events and personally displays all of his clothing for sale to members of the public attending such events, and also, takes his merchandise to support groups

³ On January 4, 2002, the Board granted opposer's motion to

for display and sale to the members." Applicant's Br. at 13 n.6. Opposer concludes by arguing that "such in-person solicitation and sale does not constitute use in United States commerce."

Opposer does not appear to seriously dispute that applicant has sold his trademarked goods across state lines, but rather opposer claims that these limited sales do not constitute use in commerce. 15 U.S.C. § 1051(3)(C). We do not find opposer's arguments persuasive.⁴

The Trademark Act, as amended, defines "use in commerce" as "the bona fide use of a mark in the ordinary course of trade and not made merely to reserve a right in a mark." 15 U.S.C. § 1127. Opposer's case law does not support its position that in-person solicitations are not a use in commerce, and we decline to hold that such solicitations are per se not use in United States commerce. Indeed, the cases that opposer cites indicate that this type of activity is a use in commerce. For example, in International Telephone, the CCPA held that:

strike applicant's surreply brief.

⁴ Applicant did not respond to opposer's argument concerning applicant's lack of use in commerce.

Affirming the Board's decision to cancel IMM's registration would require this court to hold that a commercial transaction between the corporate-owner of a mark and a member of its board of directors and investor, is *per se* a non-commercial transaction for registration purposes. Such a holding would not be in accordance with the law as to what constitutes a commercial transaction for registration purposes.

231 USPQ at 143.

Unlike the transaction in International Telephone, which was sufficient for registration purposes, applicant's transactions with members of the public in another state are even more clearly transactions in interstate commerce.

The Blue Bell case involved a sham transaction of a few dollars of sales to a cooperating company that immediately returned the product to the party. 182 USPQ at 65. Opposer does not refer to any evidence in this case that applicant's sales were anything other than bona fide sales of his goods. Applicant's sales appear to be sales to unrelated entities that were not made simply to provide a basis for trademark registration.

Opposer also refers to a five-year period in which applicant has not used his mark in commerce. However, opposer also quotes applicant's statement (Opposer's Br. at 13 n. 6) in which applicant indicates that he displays his goods at various outdoor events for sale to the

public. While it is not clear how extensive this activity was or where it occurred, it does not support opposer's contention that the evidence shows that applicant's use was "a token sale, if not a sham." Opposer's Br. at 14. Additionally, it is noted that approximately twenty months after applicant's first use, opposer filed an opposition to applicant's mark. The CCPA has held that an applicant's "subsequent decision to hold further activities in abeyance pending the outcome of the opposition appears to be but a reasonable business precaution and does not demonstrate a lack of intention to market the product commercially upon successful termination of the proceeding." Community of Roquefort v. Santo, 443 F.2d 1196, 170 USPQ 205, 208 (CCPA 1971).

Based on the evidence in the record, we cannot conclude that opposer has met its burden of showing that applicant has not used its mark in commerce. Therefore, we deny opposer's request for relief on this ground.

Likelihood of Confusion

Next, we consider the issue of likelihood of confusion. We analyze this issue in light of the factors set forth in In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973).

Likelihood of confusion is decided upon the facts of each

case. In re Dixie Restaurants, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997); In re Shell Oil Co., 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993). The various factors may play more or less weighty roles in any particular determination of likelihood of confusion. Id.; du Pont, 177 USPQ at 567.

Opposer argues that applicant's goods (window decals, shirts, sweatshirts, and hats) are identical to opposer's goods and applicant's mark DEFEAT YOUR FEARS is extremely similar to opposer's FACE YOUR FEARS and NO FEAR registered trademarks. "Purchasers seeing Applicant's DEFEAT YOUR FEARS mark, as compared with Opposer's FACE YOUR FEARS mark, when used on identical goods, will not remember the subtle differences between the similar commands "FACE" and "DEFEAT." Opposer's Br. at 15. Opposer also maintains "both Applicant's and Opposer's marks convey a similar message, namely not to be afraid of various things." Opposer's Br. at 16. Opposer submits that because of the substantial sales of products bearing its NO FEAR and FACE YOUR FEARS trademarks and its advertising, its marks are famous.

Applicant responds by arguing that opposer has engaged in the naked licensing of its mark, fear is a

weak component of the marks, and the marks in their entireties are different.

The first factor we will consider is the similarity or dissimilarity of the goods. In this regard, it is clear that the goods of the parties are, at least in part, identical. Applicant seeks registration for shirts, sweatshirts, hats, and decals. Opposer has registration for the mark FACE YOUR FEARS (Reg. No. 2,065,291) for goods including shirts, sweatshirts, and hats and NO FEAR (Registration Nos. 1,737,420; 1,856,752; 1,978,596; and 1,978,597) for shirts, sweatshirts, hats, and decals.

We must compare the goods as described in the application and the registrations to determine if there is a likelihood of confusion. Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1493, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). We agree with opposer that its goods and applicant's goods, to the extent that they include shirts, sweatshirts, hats, and decals, are identical. Because the marks are used on identical items, there is a greater likelihood that, when similar marks are used in this situation, confusion is likely. Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992)

("When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines"). Also, because the goods are legally identical, we must assume that identical goods would be marketed in similar trade channels and that they would be purchased by the same types of consumers.

Next, we consider the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression. While it is improper to dissect a mark and marks must be viewed in their entireties, Shell Oil, 26 USPQ2d at 1688, more or less weight may be given to a particular feature of a mark for rational reasons. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

We find that the marks FACE YOUR FEARS and DEFEAT YOUR FEARS are very similar in sound, appearance, and meaning. The only difference between the marks is the different initial words, "face" and "defeat." While these words are not the same, when they are used in the phrases FACE YOUR FEARS and DEFEAT YOUR FEARS, they create the same commercial impression, i.e. to overcome your fears or to not fear something. They also would look and sound similar.

When we compare the marks DEFEAT YOUR FEARS and NO FEAR, we also conclude that they are similar. Both contain the same word "fear" and they create the same commercial impression of overcoming fears or not having fears. Applicant describes its message as a positive one "where you could do whatever you want to do, so long as you have that attitude." Chriss dep. at 68. Opposer's message is similar. Moates Ex. 40 ("NO FEAR - Don't let your fears stand in the way of your dreams").

Applicant's argues that "fear" should be considered a weak component of the mark primarily because of a single use of another "fear" mark by a third party.

Here we have "naked cross licensing" as opposer in this opposition admits that it has an agreement with the owner of the FEAR NADA mark, which is registered for clothing to wit

Q. ... Are you aware of any other entities who use the mark "fear" in connection with wearing apparel?

A. The only company that we're aware is Fear Nada. We've reached an agreement with them so that we maintain our trademark and not cross over into their lines. And they maintain their trademarks and no[t] cross over into our lines.

Q. An their (sic) trademark is "FEAR NADA"?

A. "FEAR NADA" correct.

Q. An[d] so they've agreed not to use "NO FEAR" and No Fear has agreed not to use "FEAR NADA"?

A. Right, that is correct?

This admission against interest of the opposer, the import of which is, that by a private agreement between Fear Nada, Inc. and No Fear, Inc. (opposer) a fraud is being committed upon the public.

Applicant's Brief at 3-4 (citations to the record and emphasis omitted; "(sic)" in original).

From opposer's admission that there is a third-party user of the mark FEAR NADA for wearing apparel, applicant concludes that this is a naked licensing, fraud, and persuasive evidence of a lack of confusion with its mark.⁵ We disagree. Because there is another user of a Fear-derivative mark does not entitle applicant to register his mark when it is very similar to opposer's mark and it is used on identical goods. A single third-party user of a different mark does not demonstrate that opposer's marks are weak. Moore Business Forms Inc. v. Ryu, 960 F.2d 486, 22 USPQ2d 1773, 1775 (5th Cir. 1992) ("The single instance of third-party use in California does not

⁵ Opposer has objected to this evidence because applicant has not introduced a copy of the registration FEAR NADA. While we agree that the registration is not properly of record, we cannot agree that applicant cannot rely on opposer's admission that there is at least one third-party user of a mark for wearing apparel with "fear" as one of its words. Opposer relies on this exact testimony for its assertion that "other than one other FEAR-derivative mark, Opposer has prevented numerous other parties from using a mark incorporating the term 'FEAR' in connection with wearing apparel." Opposer's Br. at 29-30, citing Moates dep. at 38. Applicant is entitled to rely on the same testimony for the point opposer has already admitted, i.e., there is at least one third-party user of a Fear-derivative mark.

detract from the relative strength of Moore's mark"); Corporate Fitness Programs Inc. v. Weider Health and Fitness Inc., 2 USPQ2d 1682, 1690 (TTAB 1987) ("[A] single third-party use cannot serve to establish that the term 'SHAPE' is 'weak' in the sense that it has been commonly used in the field as to not have very much effect in distinguishing source") (parenthetical omitted); In re United States Shoe Corp., 8 USPQ2d 1938, 1940 (TTAB 1988) ("The weakness of the registered mark is not demonstrated by a single third-party use").

Applicant's other arguments concerning naked licensing and fraud are not persuasive.⁶ Opposer's agreement with a third party who owned a different mark to respect each other's marks hardly amounts to naked licensing or fraud. While applicant asserts that opposer "has made the FEAR component of its mark non-distinctive by virtue of its admitted agreement between opposer ad

⁶ More importantly, an "attack upon the validity of a registration pleaded by a plaintiff cannot be entertained by the Board unless the defendant timely files a counterclaim or a separate petition to cancel the registrations." TBMP § 319.01. See also Contour Chair-Lounge Co. v. The Englander Co., 324 F.2d 186, 139 USPQ 285, 287 (CCPA 1963) ("[T]his is an opposition only and in an opposition, this court has always held that the validity of the opposer's registrations are not open to attack"); Cosmetically Yours, Inc. v. Clairol, Inc., 424 F.2d 1385, 165 USPQ 515, 517 (CCPA 1970) ("As long as the registration relied upon by an opposer in an opposition proceeding remains uncanceled, it is treated as valid and

Fear Nada, Inc.," the cases upon which applicant relies do not support this contention. For example, in California Fruit Growers Exchange v. Sunkist Baking Co., 166 F.2d 971, 76 USPQ 85 (7th Cir. 1947), the court found that when one plaintiff used the mark SUNKIST on fruit and fruit-based products and the other plaintiff used the mark SUN-KIST for canned and dried fruits and vegetables, there was no likelihood of confusion when defendant used the mark SUNKIST on bread. Similarly, when one party obtained registration of its mark SKOL for beer with the consent of the owner of the mark SKOL for vodka, the CCPA held that this was an indication that there was no confusion involving applicant's mark SKOLA for soft drinks. Swedish Beer Export Co. v. Canada Dry Corp., 469 F.2d 1069, 176 USPQ 59 (CCPA 1972).

Here, the fact that opposer and a third-party have agreed to respect each other's NO FEAR and FEAR NADA trademarks for wearing apparel has absolutely no impact on the registrability of applicant's mark for bumper stickers and decals nor does it impact the issue of likelihood of confusion of applicant's mark DEFEAT YOUR FEARS and opposer's mark FACE YOUR FEARS. Even to the extent that the parties have agreed that opposer's NO

entitled to the statutory presumptions"). For this reason

FEAR mark and the third-party's FEAR NADA mark can co-exist does not mean that there is no likelihood of confusion between applicant's and opposer's marks. We must consider the facts in each case to determine whether there is a likelihood of confusion. The third-party use of a different mark on wearing apparel does not support a conclusion that there is no likelihood of confusion in this case.

When we consider the remaining du Pont factors, they either support the conclusion that there is a likelihood of confusion or they are neutral on this point.⁷ One factor that often plays an important role in likelihood of confusion cases is the question of fame or public recognition and renown. The Federal Circuit "has acknowledged that fame of the prior mark, another du Pont factor, 'plays a dominant role in cases featuring a famous or strong mark.'" Century 21, 23 USPQ2d at 1701, quoting, Kenner Parker Toys v. Rose Art Industries, 963 F.2d 350, 22 USPQ2d 1453, 1456 (Fed. Cir. 1992). "Famous

alone, applicant cannot prevail on these arguments.

⁷ The fact that the Examining Attorney passed the application to publication is not evidence that there is no likelihood of confusion. Congress specifically provided for opposition and cancellation proceedings for third parties to challenge the Examining Attorney's determination that there is no likelihood of confusion. 15 U.S.C. §§ 1063 and 1064.

marks thus enjoy a wide latitude of legal protection." Recot, Inc. v. Becton, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000) (FIDO LAY for "natural agricultural products, namely, edible dog treats" confusingly similar to FRITO-LAY for snack foods). Opposer has submitted evidence that its NO FEAR and FACE YOUR FEARS marks has acquired significant public recognition and renown. Opposer's evidence shows that it has over one half billion dollar in sales since 1990. Moates dep. at 29. Opposer's sales rose from just \$2.3 million in that year to more than \$130 million dollars in sales in 1995. Id. In the most recent years (1998-2000), its sales have been in the \$50 million range. Id. It has spent millions of dollars each year advertising its products, including advertising on television during the Super Bowl. Moates dep. at 30 (\$7 million in advertising including the Super Bowl advertisement in 1995). In addition to the NO FEAR trademark, the mark FACE YOUR FEARS is also heavily promoted and it is used on many of opposer's products. Moates dep. at 35. Millions of T-shirts have been sold with the mark FACE YOUR FEARS in addition to the NO FEAR mark. Id. A little more than one half of opposer's sales are made up of T-shirts, sweatshirts, and caps. Moates dep. at 42.

This evidence of sales and advertising of opposer's NO FEAR and FACE YOUR FEARS marks is a factor, therefore, that favors opposer.

In addition, opposer has obtained registrations for more than just the marks NO FEAR and FACE YOUR FEARS. Opposer also owns registrations for the marks FEAR ME, FEAR THIS, KNOW FEAR, FEAR SPORTS, and LOTS OF FEAR for wearing apparel as well as FEAR THIS and FEAR GOD for decals and/or stickers. Thus, potential purchasers would more likely believe that applicant's mark DEFEAT YOUR FEARS is in some way related to, or sponsored by, opposer. Another factor that supports opposer is the wide variety of goods and services on which it uses the mark NO FEAR. Opposer has obtained registrations for goods and services including surfboards, skateboards, surf leashes, all purpose sports bags, shoes, jewelry, sunglasses, bicycles, video game cartridges, retail clothing store services, adhesive bandage strips for skin wounds, model cars, perfume, calendars, and posters. Opposer's use of its mark on a variety of goods and services increases the possibility that there will be confusion in this case.

Based on the above, we conclude that opposer's marks FACE YOUR FEARS and NO FEAR have significant similarities

in sound and appearance with applicant's mark DEFEAT YOUR FEARS, and their meanings would be nearly the same. When these marks are used on the identical and closely related goods, confusion is likely. National Data, 224 USPQ at 749.⁸

Decision: The opposition is sustained and registration to applicant of his mark DEFEAT YOUR FEARS is refused.

⁸ Applicant's argument that opposer lacks standing because applicant maintains there is no likelihood of confusion is not well taken. Opposer clearly has standing because opposer has alleged that it is the owner of registrations that it asserts are confusingly similar to applicant's mark, and that opposer will be damaged if applicant's mark is registered. Whether confusion is likely goes to the merits of the case, not to the question of standing. Books on Tape Inc. v. Booktape Corp., 836 F.2d 519, 5 USPQ2d 1301, 1302 (Fed. Cir. 1987) ("Petitioner, a competitor of respondent, clearly has an interest in the outcome beyond that of the public in general and has standing... [T]he board has confused petitioner's standing with the merits of the case").